

Documentation Guidelines for Emergency Repair and Restoration Vehicle Exclusions

Introduction

Section 707 of the Energy Policy Act of 2005 (EPAct 2005) (Conference Report 109-190) amended the list of excluded vehicles in section 301(9) of the Energy Policy Act of 1992 (EPAct 1992) to add a new category of vehicles. See 42 U.S.C.13211(9). Excluded vehicles are not counted when determining if a fleet is covered and also are not counted when determining a fleet's annual alternative fuel vehicle (AFV) acquisition requirements. The vehicles excluded by this amendment are "...vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages...." The legislative wording of section 707 appears at the end of this guidance.¹

Relevant Dates

EPAct 2005 was signed by President Bush on August 8, 2005, toward the end of model year 2005 (August 31, 2005). Therefore, only vehicles acquired on or after August 8, 2005, qualify for the new exclusion. The U.S. Department of Energy (DOE or Department) expects that few fleets will apply for exclusions based on the new language prior to model year 2006; however, some vehicles placed in service between August 8, 2005 and August 31, 2005, may qualify for the exclusion.

Decision Process

Section 707 provides the Secretary of Energy with authority to decide which vehicles qualify for exclusion. The Department, therefore, will require that covered entities submit exclusion requests for review. Written requests for exclusion will be considered on a case-by-case basis. Under this process, the requesting entity has the burden to justify that its vehicles are used directly in repair/restoration activities. DOE's review is expected to take no more than 45 days from the time sufficient information is provided to make a decision. Based on DOE's decision, a fleet will know how many vehicles it can then subtract (exclude) from its covered light-duty vehicle count.

The process established here is similar to that currently used for exemption requests. A number of covered entities previously filed exclusion requests to ensure they were properly excluding vehicles listed in section 301(9) of EPAct 1992. The difference here is that covered entities must request exclusions with respect to vehicles described by section 707 of EPAct 2005. Incorrect classification of vehicles may leave an entity out of compliance and subject to penalties.

Exclusion Request Contents

Each entity should submit its request in letter form, using its own letterhead. It should indicate the number of vehicles for which it is requesting exclusion status and provide justification as to why the vehicles qualify as directly used in the emergency repair of lines and restoration of electric service following power outages. This justification must be in sufficient detail to allow DOE to decide how the subject vehicles are used. If there are several different classes or types of vehicles for which exclusion is sought, the requestor must include a separate justification for each class, as well as the number of vehicles that fall into each class. If insufficient information is provided, DOE will return the submission with a request for the additional information, and the 45-day

¹ While the title of section 707 is "Emergency Exemption," this provision actually describes an additional category of excluded vehicles added to the original list from section 301(9) of EPAct 1992.

period will start over. A separate request must be submitted for each model year unless otherwise directed by the Department. Exclusion requests should be submitted in triplicate to:

Alternative Fuel Transportation Program
EE-2G Forrestal Bldg.
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585
(202) 586-9171

Deciding Which Vehicles May Be Excluded

As indicated above, the Department will conduct case-by-case reviews concerning eligibility of vehicles to be excluded under this new provision. DOE expects covered entities to limit their exclusions to vehicles “directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages,” as required by the statute. DOE will work with entities to verify that the number of vehicles for which exclusion is being requested is proper.

There is no complete list of the vehicle types that qualify or do not qualify for exclusion under section 707. The Department, however, has developed some basic guidelines that express its expectations. In general, the decision to exclude a vehicle hinges on the issue of how “directly” the vehicle is used in repair and restoration efforts, as provided in the justification submitted by the entity. For example, vehicles that are permanently modified with special purpose equipment to assist in repair/restoration operations more likely will qualify for exclusion. Vehicles that are only modified temporarily will less likely receive exclusions.

Vehicles Not Likely to be Excluded

- **Meter reader vehicles:** DOE expects that these vehicles are not used directly in the repair of lines and restoration of service.
- **“Pool” vehicles or vehicles to transport personnel to sites:** These types of vehicles typically would not be expected to meet the burden of proof required to support exclusion, as they are more in the nature of general support vehicles.
- **Administrative vehicles:** Such vehicles would rarely, if ever, be considered to rise to the level of being directly involved in repair/restoration operations.

Vehicles More Likely to be Considered Excluded

- **“Bucket” trucks:** Trucks with the capability to lift personnel to the level of power lines and other equipment would probably be expected to meet the requirements under this amendment (as long as the sufficient justification is provided). At the same time, these vehicles are typically over 8,500 lb gross vehicle weight rating and already excluded.
- **“Troublemen” trucks:** These are typically considered to be trucks assigned to personnel to allow for quick response to service issues. The requesting entity needs to provide specific information about exactly how the subject vehicles are used to support exclusion. Many of these vehicles tend to be assigned to personnel to bring home at night. If so, they are already excluded.
- **Foreman vehicles:** These may be used by foremen or other supervisory personnel to visit sites where repair/restoration activities are underway. Again, the requesting entity must be specific about exactly how the vehicles are used to support a claim that the vehicles are directly used in repair/restoration. If these vehicles are assigned to personnel to take home at night, they are probably already excluded.

Timing of Exclusion Requests

Covered entities are strongly encouraged to submit exclusion requests as soon as they know they may qualify—either before the beginning of the model year for which they are making the request or very early in the model year. That way, there is sufficient time to adjust AFV acquisitions based on DOE’s decision. An entity that files a request late in a model year (and had that request rejected) may find it difficult to ensure compliance.

Appeals

If a covered entity’s exclusion request is rejected, it may appeal the decision to the Office of Hearings and Appeals using the procedures set out in 10 CFR Part 490.204(h) (if applicable) and 490.308(g). Appeals must be filed within 30 days of notification that DOE has rejected the exclusion request.

Questions

If covered entities have questions concerning excluded vehicles, they should contact the program’s information line at (202) 586-9171, regulatory_info@afdc.nrel.gov.

Example of How Exclusion Impacts AFV Acquisition Requirements

Fuel Provider X acquires 100 covered light-duty vehicles in the subject model year. The AFV acquisition requirement is 90% so fuel provider X must acquire 90 AFVs to comply with its requirements.

If 10 of these vehicles are vehicles directly used in the repair of lines and restoration of service (as determined by DOE, and based upon an appropriate exclusion request), then the fleet’s covered light-duty vehicle count would drop to 90 (100-10). Its AFV acquisition requirement would then be 81 AFVs (or 90 x 90%).

Legislative Language

Section 707. Emergency Exemption: Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended in paragraph (9)(E) by inserting before the semicolon at the end “, including vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages, as determined by the Secretary.”